

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 25, 2001

IN RE:

PETITION FOR ARBITRATION OF ITC^DELTACOM
COMMUNICATIONS, INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
THE TELECOMMUNICATIONS ACT OF 1996

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DOCKET NO.
99-00430

ORDER GRANTING MOTION FOR RECONSIDERATION AND
CLARIFICATION AND SETTING A DATE FOR FILING A RESPONSE

This matter came before the Directors of the Tennessee Regulatory Authority ("Authority") acting as Arbitrators pursuant to 47 U.S.C. § 252 on March 20, 2001 for consideration of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* ("2000 Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth") on August 28, 2000 and supplemented on March 12, 2001 by the filing of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* ("Supplement").¹

I. Procedural Facts and History

At a hearing on February 6, 2001, the Arbitrators deliberated all remaining issues in this docket. During those deliberations, the Arbitrators decided to hold the 2000 Motion in abeyance until the entry of a final order. The Arbitrators also ordered that if BellSouth wished

¹ It is not clear from the face of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* filed on March 12, 2001 whether BellSouth intended the March 12th filing to supercede or supplement the 2000 Motion. In response to a question during the arbitration, BellSouth explained that the March 12th filing supplements the 2000 Motion.

to supplement the 2000 Motion it could do so by no later than fifteen (15) days following the entry of the final order. The Arbitrators entered the *Final Order of Arbitration* on February 23, 2001.

As provided for in the *Final Order of Arbitration*, BellSouth filed the Supplement on March 12, 2001. BellSouth requests that the Arbitrators reconsider and clarify their decisions as to Issue 1(a) involving performance measures and enforcement mechanisms; combined Issues 2(b)(ii) and 2(b)(iii) involving extended loops and loop/port combinations; Issue 3(d) involving reciprocal compensation for internet service provider bound traffic; and Issue 6(d) involving rates for cageless physical collocation. On March 16, 2001, ITC^DeltaCom Communications, Inc. (“DeltaCom”) filed the *Initial Response of ITC^DeltaCom Communications, Inc. to BellSouth Telecommunications Inc.’s Motion for Reconsideration and Clarification and Motion of ITC^DeltaCom Communications, Inc. for Leave to File Detailed Response and to File Reply Brief*. In its response, DeltaCom states that the Arbitrators should deny the 2000 Motion and Supplement, but, if reconsideration is a possibility, proposes two alternatives. First, DeltaCom requests that the Arbitrators provide it additional time to file a more detailed response and continue the matter until at least April 3, 2001. Second, DeltaCom proposes that, if the Arbitrators grant the 2000 Motion and Supplement and set the matter for further proceedings, the Arbitrators should provide additional time to allow DeltaCom to file a more detailed response.

II. Deliberations and Conclusions

Tenn. Code Ann. § 4-5-317 provides that a “party, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration” Authority Rule 1220-1-2-.20(2) specifically adopts the right to file a petition for reconsideration as provided for in

Tenn. Code Ann. § 4-5-317. Although the statute does not directly apply to arbitrations under the Telecommunications Act of 1996, the Authority rule, which incorporates the statute, applies as of September 13, 2000, the effective date of the rule. This change is the result of an amendment to Rule 1220-1-1-.02 that provides that the Authority's practice and procedure rules apply to arbitration proceedings unless otherwise specified.

Rule 1220-1-2-.20(2)(a) provides that petitions for reconsideration "shall be granted within the twenty (20) day period fixed by T.C.A. § 4-5-317(c), or it shall be deemed denied" Rule 1220-1-2-.20(2)(b) contemplates that the decision-maker may grant the petition, but decide to modify the subject order at a later date.² The effect of these rules is that the Authority, or in this case the Arbitrators, may grant petitions for reconsideration within the twenty (20) day period, but determine whether any modification is necessary at a later date.

Based on the foregoing, the Arbitrators voted unanimously to grant the 2000 Motion and Supplement, but to determine whether to modify the *Final Order of Arbitration* at a later date. The Arbitrators also voted unanimously to allow DeltaCom until April 10, 2001 to file a detailed response and requested that DeltaCom state its position as to whether the Arbitrators should include the affidavit of David C. Coon and Attachments 1, 2, and 3 to the Supplement in the evidentiary record.³

² It should be noted that any request for clarification contained within the 2000 Motion and Supplement is not subject to Tenn. Code Ann. § 4-5-317 or Rule 1220-1-2-.20; therefore, any such requests are not subject to the twenty (20) day automatic denial.

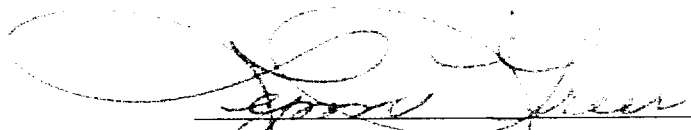
³ BellSouth attached "BellSouth Service Quality Measurement Plan (SQM) Tennessee Performance Metrics Measurement Descriptions Version 0.01," "Liquidated Damages Table for Tier-1 Measures," "Remedy Payments for Tier-2 Measures," and "SEEM Remedy Procedures" to its Supplement. BellSouth also filed the affidavit of David C. Coon with its May 22, 2000 motion for reconsideration and final best offers. BellSouth relies on this affidavit in both the 2000 Motion and Supplement. This documentation and information is not in the evidentiary record.

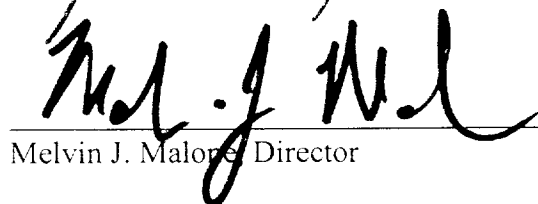
III. Ordered

BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification filed on August 28, 2000 as supplemented by *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* filed on March 12, 2001 is granted such that the Authority will determine at a further proceeding whether it should modify the *Final Order of Arbitration*, which incorporated the *Interim Order of Arbitration Award*, filed on August 11, 2000, and the *Second Interim Order of Arbitration Award*, filed on August 31, 2000. ITC^DeltaCom Communications, Inc. shall file a response to the motion as supplemented on or before April 10, 2001.


TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary